**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR**

**MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929**

**WP(C).No. 7787 of 2005(B)**
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**PETITIONER:**
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**B.E.MANICK PRASAD,**
**BALUMMEL HOUSE,KANNAMALY,KOCHI-682 008.**

**BY ADV. SRI.MURALI PURUSHOTHAMAN,**
**SRI.P.M.BENZIR,**
**SRI.DEEPU LAL MOHAN.**

**RESPONDENT:**
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**CHELLANAM GRAMA PANCHAYAT,**
**REPRESENTED BY ITS SECRETARY,**
**CHELLANAM,ERNAKULAM DISTRICT.**

**BY GOVT. PLEADER SRI. R. LAKSHMI ARAYAN,**
**ADV. SRI.DINESH R.SHENOY.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**W.P.(C). NO.7787/2005-B:**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P.1: COPY OF THE RESOLUTION NO. 20 DTD. 23/01/1989.**

**EXT.P.2: COPY OF THE LEGAL OPINION DTD. 02/02/1990 OBTAINED BY THE PANCHAYAT FROM THE ADDITIONAL GOVERNMENT PLEADER, KOCHI.**

**EXT.P.3: COPY OF THE DOCUMENT NO. 1786/1990 DTD. 28/05/1990 REGISTERED WITH THE OFFICE OF THE SUB REGISTRAR, KOCHI.**

**EXT.P.4: COPY OF THE LAWYER'S NOTICE DTD. 01/11/2004 ISSUED TO THE RESPONDENT.**

**EXT.P.5: COPY OF THE LETTER DTD. 07/01/2005 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT.**

**EXT.P.6: COPY OF THE LETTER NO. A4/456/88 DTD. NIL ISSUED BY THE RESPONDENT PANCHAYAT.**

**EXT.P.7: COPY OF THE REPLY SUBMITTED BY THE PETITIONER TO EXT.R1.A.**

**RESPONDENT'S EXHIBITS:** **NIL.**

**//TRUE COPY//**

**prv.**

**K.BALAKRISHNAN NAIR, J.**

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Writ Petition (C) No.7787 of 2005-B

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Judgment

The petitioner was the owner of one acre 63 cents of land in Survey Nos.235/1 and 236/1 of Kumbalangi village, Kochi taluk in Ernakulam district. He sold the property to the respondent grama panchayat as per Ext.P3 deed. The total sale consideration for the property was fixed as Rs.7,86,500/-. While executing Ext.P3 deed, only Rs.4 lakhs was paid and the balance amount was to be paid in two instalments during the financial years 1991-92 and 1992-93. The petitioner submits, the balance sale consideration was never paid to him. Therefore, he caused to issue Ext.P4 lawyer notice to the Secretary of the grama panchayat and also filed Ext.P5 representation. By Ext.P6, the panchayat informed the petitioner that after taking legal advice, a final decision in the matter will be informed to him. Since no decision was forthcoming, this Writ Petition is filed, seeking the following reliefs :

> *"i. To issue a writ of mandamus or other appropriate writ, order or direction, directing the respondent to surrender possession of the property of the petitioner referred to in Ext.P3 forthwith.*

*ii. To issue a writ of mandamus or other appropriate writ, order or direction, directing the respondent to comply with the terms of Ext.P3 agreement and the provisions contained under Section 178 of the Kerala Panchayat Raj Act.*

*iii. To declare that the action of the respondent panchayat in acquiring the property of the petitioner and the method adopted for the same is illegal and void.*

*iv. To declare that the respondent panchayat is not entitled to continue to hold the petitioner's property referred to in Ext.P3.*

*v. To order the cost of the proceedings under Rule 157 of the Kerala High Court Rules."*

2. The Panchayat has filed a counter affidavit, stating that the property was valued by the Government officials concerned, highly inflating the value. Therefore, the Government interfered and instructed the Panchayat not to release the balance consideration. Disciplinary action was also taken against the officials concerned. Further, the petitioner had mortgaged the property to the South Indian Bank, Thoppumpady branch for a huge amount. Ext.P3 was executed when the said liability was subsisting. The said liability was cleared

under one-time-settlement scheme, only long after the execution of Ext.P3, it is submitted. The petitioner has filed a reply affidavit, producing Ext.P7. So, the Panchayat has filed an additional counter affidavit.

3. I heard the learned counsel on both sides. According to the learned counsel for the petitioner, Ext.P3 is not a sale deed. It is only a registered agreement for sale. As per Ext.P3, the Panchayat is liable to pay the balance consideration as the liability towards the Bank has already been cleared. The learned counsel for the Panchayat would submit that Ext.P3 is a pakka sale deed. The balance sale consideration could not be released because of the objection from the part of the Government and also the fraud played on the Panchayat by the petitioner by selling the property which was already mortgaged to the South Indian Bank. The learned counsel for the Panchayat also submitted that the Panchayat has already taken a decision, not to release any further amount to the petitioner. He further submitted that the subject matter of the Writ Petition is not one, in which, the writ jurisdiction of this Court can be invoked.

4. I feel that the civil dispute between the Panchayat and the petitioner has to be settled elsewhere. The forum of this Court is quite inappropriate for

settling the same. The Panchayat is directed to communicate to the petitioner, the final decision it has taken on the question of making payment of the balance consideration to him, on production of a copy of this Judgment. Subject to the above direction and without prejudice to the contentions of both sides, the Writ Petition is dismissed.

10.12.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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